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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

# REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Fifteenth periodic reports of States parties due in 1998

Addendum

Germany*

[29 June 2000]

* This document contains the fifteenth periodic report of Germany, due on 15 June 1998. For the thirteenth and fourteenth periodic reports submitted in one document and the summary records of the meetings at which the Committee considered them, see CERD/C/299/Add.5 and CERD/C/SR.1196, 1197.

The annexes to the report submitted by the Government of Germany may be consulted in the files of the Committee's secretariat.

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## I. GENERAL SECTION

1. The prohibition on discriminating against a person because of his/her race in Germany is derived from the right to human dignity. Human dignity is recognized and guaranteed as a supreme right in the Basic Law for the Federal Republic of Germany (art. 1). Article 3, paragraph 3, sentence 1, of the Basic Law determines:

> "Nobody shall be prejudiced or favoured because of their sex, birth, race, language, national or social origin, faith, religion or political opinions."

2. The protection of all people against discrimination, especially for reasons of national origin or race, is an objective of outstanding importance to German law and German politics.

3. The Federal Republic of Germany ratified the International Convention on the Elimination of All Forms of Racial Discrimination as early as 1969. Since then, the German Government has submitted 14 reports to the Committee on the Elimination of Racial Discrimination. In these national reports it provided the Committee with comprehensive information on the legislative, judicial, administrative and other measures that official agencies in the Federal Republic of Germany take to prevent and eliminate racial discrimination.

4. Taking account of the Committee's concluding observations of 20 March 1997 with regard to Germany's thirteenth and fourteenth report (hereafter "last report") (CERD/C/304/Add.24*), Germany's thirteenth and fourteenth report is updated as follows:

## II. SPECIAL SECTION

### A. Re article 2 - Protection of individual ethnic groups in the Federal Republic of Germany

5. With regard to article 2 of the Convention, the last report contained information on the protection of the Danish (in the Land of Schleswig-Holstein) and Sorbian (in the Länder Brandenburg and Saxony) national minorities and the other native ethnic groups traditionally resident in Germany with German nationality, the Sinti and Romanies and the Friesians. Additionally, the Committee was informed about the Jewish community in Germany.

#### 1. Developments since the last report

6. In future, the ethnic group of German Sinti and Romanies will also be termed a national minority.

7. As a result of the elections to the Land parliament held in the year 2000, the Südschleswigsche Wählerverband (SSW – Southern Schleswig Voters' Alliance), the political organization of the Danish minority, now holds three seats in the Schleswig-Holstein Land parliament.

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* Subsequently published in Official Records of the General Assembly, fifty-second session, Supplement No. 18 (A/52/18), paras. 152-175.

8. In June 1998 there were approximately 68,500 members of the Jewish community. As a result of immigration from the States of the Commonwealth of Independent States (CIS), this number has more than doubled since 1990. Since then, the number of Jewish communities has risen from 67 to 72. The Federal Government, Länder and local authorities support the integration of the immigrants financially and with integration measures, e.g. language courses.

9. The Federal Government is aware of Germany's historical responsibility towards Jews. Scientific research at nearly all the universities and at many special institutes increasingly deals with the history of the Jews in Germany and the history of the Holocaust. National and regional memorials and documentation centres recall Jewish life in Germany in previous times and the Nazi crimes. A proclamation by the Federal President on 3 January 1996 declared 27 January the day of the liberation of the Auschwitz concentration camp, to be the "Day of Remembrance of the Victims of National Socialism".

10. Furthermore, in recent years Germany has participated in improving the protection of traditional ethnic groups and creating binding regulations for their protection. In 1997 Germany therefore ratified the Council of Europe Framework Convention for the Protection of National Minorities, which contains principles on the protection of national minorities that are binding under international law and obliges the parties to take protection and promotion measures. The Framework Convention applies to the four ethnic groups mentioned above. It entered into force for Germany on 1 February 1998.

11. The European Council Charter for Regional or Minority Languages, in which the regional or minority languages traditionally spoken in a member State are to be protected and promoted as a threatened part of the European cultural heritage, was ratified in September 1998. It entered into force for Germany on 1 January 1999. Minority languages protected by the Charter in Germany are Danish, Upper and Lower Sorbian, Northern and Sater Friesian, as well as the Romany spoken by the German Sinti and Romanies and Lower German.

12. In order to make a contribution to overcoming conflicts and thus to solving the problems of minorities in Europe, in 1996 Germany and Denmark founded the European Centre for Minority Issues (ECMI). ECMI concerns itself with national minorities as well as other traditional (autochthonous) groups of people in Europe and is dedicated, from a European point of view, to the problems of minorities and majorities in the countries concerned by means of research, information and advice.

### 2. Special protection for some national minorities

13. In its concluding observations the Committee expressed its concern about the fact that although Germany has granted four small traditional national groups in Germany the status of ethnic minorities and given them special protection, larger groups of people (in terms of numbers), especially people with a right of residence or after acquisition of German nationality, are not granted any special protection. It encouraged the State party to examine further measures with which all national groups living in Germany can be granted special protection (paras. 14 and 21).

14. The policy of the Federal Government is to protect all the ethnic groups living in Germany. However, it points out that the special promotion of national minorities in Germany does not hamper the guarantees for the other groups that are cited in the Committee's concluding observations. The rights pledged in the Convention are granted without prejudice to all ethnic groups and foreigners living in Germany. Each one has the right to keep its own language and culture. Accordingly, the Federal Government's integration policy is not aimed at assimilating foreigners living in Germany or Germans of foreign origin.

15. As the Federal Government stated in the last report, the equality principle and the ban on discrimination in article 3 of the Basic Law bind the legislature, executive and judiciary as directly applicable law. Anyone whose rights are infringed by public authority has recourse to the courts under article 19, paragraph 4, of the Basic Law. The family members of all population groups with German nationality enjoy all rights and freedoms of the Basic Law (see also introduction to article 5) without restrictions. Above and beyond this, there are special regulations under constitutional and ordinary law for the Danes, Sorbs and Friesians living in concentrated settlements; these were outlined in the last report.

16. To understand the special regulations for the above-mentioned ethnic groups it is useful to take a look at historical developments.

17. Special protection for minorities was started in particular in connection with the Peace Treaties after the end of the First World War. However, only autochthonous minorities were included under these provisions.

18. In the Peace Treaties many national borders were adjusted to take account of the settlement areas of ethnic groups. Furthermore, the populations were granted extensive option rights. Nevertheless, in Central and Eastern Europe there remained large minorities who did not belong to the majority population of the States in which they lived. It has been estimated that this situation applied to between 25 and 30 million people. The new borders meant that members of certain nationalities were in countries in which the majority population was of a different nationality and they themselves were only a minority. The main concern was to protect the linguistic and cultural existence of people who continued to live in their traditional homelands the borders of which had moved.

19. It was seen to be correct that special protection would have to be given to these people so that they could keep their language and culture and not lose their own identity as a consequence of pressure to assimilate that might be exerted on them by the majority population in question. The post-war treaties therefore not only obliged the countries concerned to treat the minorities concerned equally to the other nationals, but also granted the members of the protected ethnic groups special rights with respect to the school system and the use of their language. Thus, for example, the countries concerned were obliged to ensure primary school education in the language of the minority and to provide public funding for religious, educational and welfare purposes.

20. As a consequence, the members of the groups concerned had to be given opportunities to, for example, attend their own schools and kindergartens, to maintain their own theatres and

libraries, and to do everything they could to preserve their own language and culture. This was to be seen as compensation for the fact that many of those concerned had become citizens of another State against their will and found themselves to be a minority population there.

21. In contrast, the foreigners who live in Germany or former foreigners who have now been naturalized are people who have not been affected by the redrawing of borders. Rather, they decided for themselves to come to Germany. For example, this applies to the former "migrant "workers" from countries such as Turkey, the former Yugoslavia, Greece, Spain, Portugal, Italy, Morocco and Tunisia. But it also applies to family members from around 180 countries who live in Germany whose presence in Germany is almost exclusively a result of their own personal decisions, or at least decisions made by their parents or grandparents.

22. The additional special need for protection which is granted to someone who has been affected by border changes, does not apply here. To this extent, the general laws, which also give protection to the rights of these people, are sufficient.

B. Re article 3 - Racial segregation

23. In the last report it was stated that there is no apartheid in Germany and that this is excluded under the Constitution.

24. In its concluding observations the Committee noted with concern that the State party had not provided any information about measures pursuant to article 3 of the Convention on removing racial segregation, as requested in General Recommendation XIX of the Committee (para. 19).

25. The Federal Republic of Germany actively promotes the integration of foreigners and immigrants living legally and permanently in Germany. Efforts in this area will be further intensified in the future.

26. Insofar as foreign citizens in Germany live in self-contained communities in conurbations, they do this because this is what they want. These people frequently belong to the same ethnic group. For example, this is the case in the Kreuzberg area of Berlin, in which large numbers of Turks live. Here, a veritable Turkish microcosm has developed in which Turkish groceries, Turkish restaurants and snack-bars and Turkish banks are located next to each other.

27. The starting point for the development of these residential areas was without a doubt the availability of low-cost housing. Foreign workers who, when they first came to Germany, assumed that they would soon be returning home did not want to spend a lot of money on housing. Rather, they tended to save as much money as possible in order to use it for building up their own business at home. They therefore preferred cheap flats. These were frequently in designated renovation areas. This does not refer to decayed districts. For example, large areas of Kreuzberg have been renovated in recent years. This district has become attractive to Germans again and today is home to many artists, for example. Moreover, the migrant workers wanted to live in an environment with their countrymen. Here they encountered a familiar residential environment that was associated with an infrastructure that felt like home for them.

28. State regulation of immigration in residential areas of this kind would also be rejected by the foreign families and individuals concerned as a serious interference in their private lives. A regulation of this kind would always lead to hardships and other unbearable circumstances and it would be extremely difficult to monitor implementation.

29. The 1995 representative study of the situation of foreign employees and their families submitted by the Federal Ministry of Labour and Social Affairs reveals that the difficulties encountered by foreigners in Germany looking for housing have diminished.

C. Re article 4 - Combating racist propaganda and organizations

30. A key concern of German politics continues to be firmly combating organizations with racist or racially discriminatory aims and to energetically prevent the dissemination of propaganda and the use of symbols of extreme right-wing, especially Nazi, organizations. Incitement and goading to racial hatred are firmly pursued by the prosecuting authorities.

31. In the last report the Federal Government pointed out that the writings flooding in from abroad, in particular, in which neo-Nazi and other extreme right-wing propaganda incite racial hatred are a problem. In 1995 the Federal Government successfully applied to Denmark for the extradition of the United States citizen Gary Lauck, who had exported such propaganda to Germany from the United States. Since then, Mr. Lauck has completed a four-year prison sentence pursuant to a non-appealable judgement of Hamburg district court of 22 August 1996 for incitement, goading to racial hatred, disseminating propaganda and using symbols of anti-constitutional organisations. In particular, he was charged with sending propaganda (especially, "NS-Kampfruf" [NS Call to Arms]) of the "Nationalsozialistische Deutsche Arbeiterpartei/Auslands- und Aufbauorganisation" (NSDAP/AO) [German National Socialist Workers' Party – Foreign and Establishment Organization], founded by him in 1972, to Germany – but also to other countries. This organization sees itself as the largest national socialist underground organization. Its declared aims are to establish national socialist authority in Germany and the racially motivated persecution of the Jews. After a rejection in court of premature release, Mr. Lauck was released from prison after fully serving his sentence and deported to the United States on 23 March 1999.

1. Regulations under criminal law and their effectiveness

(a) Legal foundations

32. In its last report on this item (paras. 44 and 142) the Federal Government explained sections 86, 86 a, 130, 131 of the German Penal Code with the supplements and developments that had entered into force up to 1994. These penal provisions have proved themselves. There has been no need for further changes to the law.

(b) Evaluation of the criminal prosecution statistics

33. Evaluation of the criminal prosecution statistics in the old Federal Länder reveals the following current trend: in 1997 209 people, including 39 juveniles, were sentenced for a crime

under section 130 of the German Penal Code (incitement). Since the penal provisions mentioned also include acts other than those with a racial motive, only some of the sentences mentioned here fall under the Convention's area of application.

34. Sections 86 and 86 a of the Penal Code have also been included in the criminal prosecution statistics since 1994. In 1997 420 people were sentenced under section 86 (disseminating propaganda of anti-constitutional organizations) and 270 people under section 86 a (using symbols of anti-constitutional organizations).

35. Currently, no figures are available for sentences under sections 129 and 129 a of the Penal Code, since the criminal prosecution statistics in Germany make no distinction between extreme left-wing or extreme right-wing organizations.

2. Measures against organizations with racist objectives

(a) Bans on associations and parties

36. At the end of 1998 there were 114 extreme right-wing organizations and other groups of people in Germany. They have around 53,600 members.

37. The ban on associations that are not political parties is governed in article 9, paragraph 2, of the Basic Law and the Law Relating to Associations. According to these, associations are banned if their purposes or activities contravene the criminal laws or if they are against the constitutional order or against the philosophy of international understanding.

38. Since the last national report the Länder have banned another four extreme right-wing associations. This means that since 1992 alone, 10 regional associations with extreme right-wing objectives, whose activities were limited to one Federal Land, have been banned and wound up.

(b) Suspension of the basic rights of individuals

39. In the last report the Federal Government stated under this item (para. 62) that under article 18 of the Basic Law of the Federal Constitutional Court, upon application of the German Bundestag, the Federal Government or a Land government can suspend certain basic rights if they are being abused to fight against the free democratic basic order. In this case this applies in particular to the freedom to express opinions, the freedom of the press, the freedom of assembly and the freedom of association. In December 1992 the Federal Government applied to the Federal Constitutional Court for the suspension of certain basic rights pursuant to article 18 of the Basic Law with respect to two people from the extreme right-wing milieu.

40. On 18 July 1996 the Federal Constitutional Court rejected the two applications from the Federal Government. In its press release, the Court pointed out that at the time of the decision it had not been possible to determine whether the respondents - as required by article 18 of the Basic Law - would continue to pose a threat to the free democratic basic order of the Federal Republic of Germany in future. The Federal Government assesses the application as a success,

in spite of the rejection by the Federal Constitutional Court, since the two extreme right-wingers have largely ceased their agitation against the free democratic basic order solely because of the applications for the suspension of some of their basic rights. In the world of the extreme right wing, they have lost their support and their earlier importance.

3. Combating racism and racial discrimination in the field of foreign policy

41. As already shown in the last report, combating racism and racial discrimination is also a major concern of foreign policy. The Federal Republic of Germany continues to stand up for this, above all within the framework of the European Union, the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE) and the United Nations.

42. The Federal Government informs the Committee of the fact that the Joint Measure of the European Union to combat racism and xenophobia announced in the last report (para. 65) was adopted on 15 July 1996. According to the Joint Measure, the member States of the European Union undertake either to making racist or xenophobic behaviour criminally punishable or to draw back from the principle dual criminal liability when prosecuting such crimes for the purposes of effective judicial cooperation.

43. The European Monitoring Centre on Racism and Xenophobia established by Council Regulation 1035/97 of 2 June 1997 started its work in January 1998 in Vienna. The main objective of the Monitoring Centre is to provide the Community and the member States with objective, reliable and comparable information about racist, xenophobic and anti-Semitic manifestations at the European level. For this purpose, it collects, stores and analyses information and data that are transmitted to it from research institutes, member States, Community bodies and international organizations. It is setting up and coordinating a European network about racism and xenophobia (RAXEN), which cooperates with national university research institutes and non-governmental and international organizations active in the field.

44. The working groups of the European Commission against Racism and Intolerance (ECRI) have intensively examined the actual and legal conditions in the individual member States of the Council of Europe, thus also in Germany, and formulated recommendations addressed to them.

45. Moreover, Germany supports the efforts of the United Nations to counteract racism and xenophobia throughout the world. Germany was therefore in favour of the establishment of a Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. The Special Rapporteur submitted a report on his visit to Germany in 1995 to the Commission on Human Rights in the spring of 1996.

46. After Germany had spoken up for the declaration of a Third Decade to Combat Racism and Racial Discrimination, it also actively participated in the decision to hold a World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in the year 2001. The Federal Government used the German presidency of the EU Council in the first half of 1999 to advance, together with its partners in the EU, the European preparatory process for the World Conference coordinated by the Council of Europe. In this context, it committed itself to European countries dealing with racism and xenophobia intensively and actively on the

one hand and maintaining an active exchange of opinions with other regional groups on the other hand. The Federal Government will give additional support to the preparations for the World Conference both at the European level and within the context of the United Nations in the form of voluntary financial contributions.

## D. Re article 5 - Comprehensive protection of human rights

### 1. Introduction

#### (a) Constitutional position in Germany

47. According to the Basic Law for the Federal Republic of Germany everybody, regardless of his/her nationality, has the right to self-fulfilment insofar as they do not violate the rights of others or offend against the constitutional order or morality (art. 2, para. 1, Basic Law). Any discrimination on the basis of sex, birth, race, language, national or social origin, faith, religion or political opinions is prohibited (art. 3, para. 3, sentence 1, Basic Law). This protection initially applies vis-à-vis public authority. However, as part of the objective constitutional order it also has an impact on civil law relationships. The freedom of faith and conscience, freedom of opinions and of the press, freedom of art and scholarship, privacy of correspondence, posts and telecommunications and the inviolability of the home are designed as human rights (i.e. everyone's rights). All Germans have the right to assemble and associate (arts. 8 and 9, Basic Law), enjoy freedom of movement throughout Federal territory (art. 11, Basic Law) and freedom to choose a profession (art. 12). Property and inheritance rights are guaranteed (art. 14). The Constitution and the laws as well as their practical guarantees ensure that everyone - regardless of nationality - can exercise all of the rights named in article 5 of the Convention.

#### (b) Support in prosecuting war crimes and other crimes against humanity

48. The Federal Government believes that the effective prosecution of serious infringements against humanitarian international law is a major contribution to the worldwide protection of human rights. It would therefore like to inform the Committee that since the entry into force of the Act on Cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) outlined in the last report (para. 73) active judicial assistance has developed between the ICTY and the competent German authorities. The many requests from the ICTY are processed quickly and efficiently by the German authorities in the awareness of the importance of the Tribunal's work for humanitarian international law. If there are any problems in individual cases, pragmatic solutions are found. Regardless of this, there is a regular exchange of opinion between representatives of the Tribunal and the German authorities under the auspices of the Federal Ministry of Justice.

49. Furthermore, on 5 May 1998 the Act on Cooperation with the International Tribunal for Rwanda entered into force. Together with the Act on International Judicial Assistance in Penal Affairs, this forms the domestic foundation for judicial assistance with the International Tribunal for Rwanda. This has now pronounced its first judgements. In the meantime the Tribunal has also made its first requests for judicial assistance to Germany.

50. Moreover, in the United Nations Preparatory Commission the Federal Government firmly advocated the establishment of a permanent International Criminal Court that is to be responsible for the prosecution and punishment of the most severe crimes (genocide, war crimes, crimes against humanity) in the period covered by the report. The Statute of the International Criminal Court, which has now been adopted with Germany's approval, gives the Court, among other things, responsibility for the crimes of apartheid and persecution for racial or certain other reasons. The Federal Government will commit itself to the Statute entering into force as soon as possible: the legislative procedure necessary for the instrument of ratification to be deposited by the Federal Republic of Germany was initiated in 1999.

### 2. The law concerning foreigners and asylum practice

51. In its concluding observations (para. 22), the Committee asked for the law concerning foreigners and its implementation (according to General Recommendation XI of the Committee) and current asylum practice to be discussed in the report, especially with regard to the list of the so-called "safe" third countries.

52. In the last report the Federal Government already pointed out that under article 3 of the Geneva Convention relating to the Status of Refugees, the parties are prevented from treating people differently because of their race, religion or country of origin. This means that arbitrary considerations may not be made when granting protection to refugees.

53. For the assessment of the question of "safe countries of origin", only objective criteria are decisive, i.e. that in these countries, because of the legal situation, the application of the law and the general political conditions, it is guaranteed that neither political persecution nor inhumane or degrading punishment or treatment take place there. The precondition for the third country regulation is that in these countries the application of the Convention relating to the Status of Refugees and the European Convention for the Protection of Human Rights and Fundamental Freedoms is ensured. The lists of safe third countries and safe countries of origin are determined by an act of parliament, which requires the approval of the Bundesrat. In the event of a change in the political situation and the legal conditions, the lists of safe third countries and safe countries of origin are adapted accordingly. An up-to-date list is enclosed in annex 1.

### 3. The Federal Government's integration policy

#### (a) General

54. The integration of the foreigners living permanently and legally in Germany continues to be a special focus of policy on foreigners. The aim of the integration policy is to allow the foreigners in Germany a life with equal opportunities and full participation in all areas of society. Especially with regard to learning the language, education and vocational training and access to work, the Federal Government, Länder and local authorities as well as charitable organizations and youth associations support measures that intensify the participation of foreigners, and especially young foreigners.

55. The budget of the Federal Ministry of Labour and Social Affairs alone contained around DM 86 million in 1998 for the promotion of the linguistic, professional and social integration of

foreign employees and their families. Since 1968 the Federal Ministry of Labour and Social Affairs has spent almost DM 1.7 billion on integration measures. These measures are a supplement to the professional and labour market integration measures of the Federal Labour Institute and the integration measures of other Federal ministries, the Länder and local authorities, as well as private organizations. The focuses of the measures funded are the promotion of social counselling for foreigners, teaching them German, professional integration with special promotion for young foreigners in the transition from school to work, social and professional integration of foreign women, improving the way Germans and foreigners live together, information measures and training multipliers.

56. As a result of these measures, the educational situation of young foreigners in particular has continuously improved in recent years. Therefore, today 86.5 per cent of the 15- to 14-year-old Turks achieve a German school-leaving qualification; 10 years ago this could be said of only 41.8 per cent. Ninety per cent of women successfully complete their education; 10 years ago this was the case for only 43.9 per cent. The Federal Government and Länder set the course for this development by comprehensive funding of homework assistance and large-scale funding for a pilot project "foreign children and young people". The objective of the measures is to give as many young foreigners as possible a qualification for starting work. Social Code Book III sees the promotion of young foreigners as a key task of educational and labour market policy within the context of the provisions for promoting vocational training (arts. 240-247, Social Code Book III).

57. Examples of integration measures with respect to article 6 of the Convention are given below.

(b) Islam

58. According to the German Basic Law parents and children have a right to religious instruction at school if there are enough pupils and the religious community in question has an adequate organizational structure. There is general social consensus that regular Islamic religious instruction at German schools would be desirable in view of the presence of around 2.5 to 3 million Muslims in the country. All of the parties represented in the German Bundestag, the two major Christian denominations and other groups of society have spoken out in favour of this. Therefore, the principles of a judgement of the Berlin Higher Administrative Court of 4 November 1998, which adjudged an Islamic association in Berlin the right to give religious instruction, were unanimously welcomed and have meanwhile also been confirmed by the Federal Administrative Court.

59. In the Federal Länder in Germany, which are responsible for education, for many years there have been a raft of attempts to offer Islamic religious instruction. The difficulty is that the State authorities to date have no contact with people who can authoritatively and authentically decide on the doctrine and contents of the religious instruction. Islam has no organizational structures similar to those of the Christian Churches. That is why, after the judgement from the Berlin Higher Administrative Court was issued, there were also critical voices from other Muslim associations that deny the plaintiffs there the right to permanently design religious instruction for Berlin's Muslims.

60. The problem of the contact partner has not yet been solved. However, this is not due to a lack of good will on the part of the State authorities and Muslims in Germany, who have recognized this problem. The Federal Government and the Länder will continue to make every effort to find a solution.

61. For reasons of completeness, it must be pointed out that the total number of places of worship for Muslims in Germany has now increased to around 2,200.

(c) Reform of the nationality law

62. The Act on the Reform of the Nationality Law, promulgated in the Federal Gazette on 23 July 1999 (BGBl. I p. 1618) and whose provisions largely entered into force on 1 January 2000, means that a major goal of integration policy has been achieved. The continuing principle of origin, according to which only children with at least one German parent acquire German nationality, is supplemented by the territorial principle (ius soli). According to this, children born in Germany but with foreign parents acquire German nationality at birth if one parent has had his legal residence in Germany for at least eight years and has a right to reside or has had an unlimited residence permit for at least three years. For children up to 10 years old, who were born before this reform entered into force and where the conditions for the ius soli acquisition of German nationality were in place at the time of their birth and continue to be in place, a right to naturalization limited to one year has been created. If the child acquires a foreign nationality alongside German nationality, within five years of attaining its majority it has to decide between German nationality and the foreign nationality inherited from its parents (option) - apart from the legal exceptions that allow acceptance of multiple nationalities.

63. In future, adult foreigners will be given an entitlement to naturalization after legal and regular residence in Germany of 8 (instead of the previous 15) years. The principle of avoiding multiple nationalities remains. However, the exceptions to this principle have been expanded. For example, the naturalization requirement to give up the previous nationality is dispensed with if giving up this nationality would lead to considerable disadvantages, especially of an economic nature or relating to property. In the case of people suffering political persecution and recognized refugees, in future efforts to dismiss will generally be dispensed with.

### 4. Consideration of the concerns of foreigners in the administration of justice

64. Every German and every foreigner who feels that his/her rights have been violated can go to the courts. In the event that the rights were violated by public authority, the right of the individual is covered by article 19, paragraph 4, of the Basic Law. The German courts fulfilled their task of efficiently protecting the rights of the individual during the period covered by the report. One example of this is the decision of the Düsseldorf Higher Regional Court of 28 May 1999 - 14 U 238/98 - (ZIP 1999, 1357 ff.). The Court issued a non-appealable decision to the effect that foreign taxi drivers could not be excluded from certain trips by their radio control centres. Since 1997, a Duisburg radio-controlled taxi centre had given its customers the option of being able to specify a German driver. Several Turkish taxi drivers brought an action

against this. The Higher Regional Court prohibited the taxi headquarters from continuing this offer because it violated the principle of equal treatment of all taxi drivers and differentiation according to the nationality of the drivers appears to be unethical with regard to article 3, paragraph 1, of the Basic Law.

5. Measures under insurance law

65. In its concluding observations (para. 16), the Committee noted with concern that private insurers were discriminating against ethnic groups and that it was the duty of the victims to act against this. The Committee is of the opinion that German Federal laws for the insurance sector should prohibit such abuse.

66. In the last report the Federal Government pointed out that the calculation of premiums based on nationality was expressly prohibited. Article 81 e inserted into the Insurance Supervision Act was created because according to general opinion, nationality and membership of an ethnic group cannot in itself be a risk criterion. The anti-discrimination clause included in the Insurance Supervision Act and the measures carried out by the Federal Supervisory Office for Insurance Companies on the basis of this provision as well as the educational work of the Federal Government's Commissioner for Foreigners have led to a situation where in 1997 only one complaint was registered, which was clarified by the intervention of the Federal Supervisory Office.

6. Racial discrimination in the private sector, especially access to the labour market and equal treatment after conclusion of a contract of employment

67. In its concluding observations the Committee once again recommended that the promulgation of a wide-ranging Anti-Discrimination Act should be considered again (para. 20). It expressed the concern that there is no wide-ranging legislation with a ban on racial discrimination in the private sector pursuant to article 2 (1) (d) and article 5 (e) (i) of the Convention (para. 17).

68. The Federal Government continues to seriously consider the Committee's proposal to adopt comprehensive anti-discrimination legislation. Paragraph IX.10 of the Coalition Agreement of 20 October 1998 makes provision for the drafting of such a law. The forming of opinions with regard to the extent to which an Anti-Discrimination Act can improve the existing legal protection against discrimination has not yet been completed. The Federal Government points out once again that discrimination is already largely excluded by the provisions about equal treatment in the Constitution, by detailed criminal law provisions, administrative regulations, and by the general civil law provisions as well as by the comprehensive legal protection available in Germany. This is especially the case for access to the labour market and equal treatment after the conclusion of a contract of employment, which have been further improved by changes to the law.

69. As a result of the reform of labour promotion legislation that entered into force on 1 January 1998 (arts. 284-288, Social Code Book III), the legal regulations of work permit legislation (art. 19, Labour Promotion Act) have been changed. This change pursued the objective of correcting the legal position of foreigners living in Germany with regard to bringing

their access to the labour market into line with that of German employees, especially by means of removing the obligation for a work permit. In addition to nationals of the EU/EEA, who should be granted freedom of movement within the European Union under Community law or freedom of movement pursuant to the Convention on the European Economic Area (art. 284, para. 1, sentence 2 (1), Social Code Book III), all foreigners from third-party States with an unlimited right of residence were also generally exempted from the obligation for approval of employment (art. 284, para. 1, sentence 2 (2), Social Code Book III). This means that now around 3.6 million, i.e. almost half, of the foreigners living in the Federal Republic have been exempted from work permits and, thus, placed on a completely equal footing with Germans with regard to access to the labour market. At the same time, the entitlement to the previous special work permit governed by ordinances (art. 2, para. 1 (6), Work Permit Ordinance) for foreigners who have a residence permit or approval (e.g. de facto refugees) and have been in the Federal Republic for six years, was laid down in article 286, paragraph 1, sentence 1 (1b) Social Code Book III, as justifying a claim for entitlement to a work permit. There is a legal right to the issuing of an entitlement to work regardless of the situation on the labour market. The entitlement to work is in principle issued for an unlimited period and without restrictions with regard to territory or a certain company or a certain professional activity. This, too, opens up free access to the labour market.

70. Moreover, in order to avoid discrimination in the principles for providing work it was clearly stated that the employment exchanges must not consider any restrictions in job offers with regard to the nationality of people looking for an apprenticeship or work (art. 36, para. 2, Social Code Book III).

71. The actual equality of foreigners with regard to access to the labour market, in addition to the broad legal equality, is also backed up by the above-average increase between 1988 and 1993 in the number of employed foreigners subject to social security in the western Federal territory by around 34.5 per cent, from 1.62 million to 2.18 million employees. The increase even continued in spite of the general trend of falling employment that started in 1991. The employment of foreigners only started to fall in 1993. Employees subject to social security in the middle of the year:

| Year | Total | Foreigners | Proportion |
|---|---|---|---|
| 1989 | 21 619 283 | 1 689 299 | 7.8% |
| 1990 | 22 368 078 | 1 782 253 | 8.0% |
| 1991 | 23 173 439 | 1 898 540 | 8.2% |
| 1992 | 23 530 259 | 2 036 154 | 8.7% |
| 1993 | 23 122 456 | 2 183 579 | 9.4% |
| 1994 | 22 755 284 | 2 140 532 | 9.4% |
| 1995 | 22 597 349 | 2 128 722 | 9.4% |
| 1996 | 22 344 063 | 2 077 682 | 9.3% |
| 1997 | 22 096 080 | 2 001 860 | 9.1% |

72. In the eastern Federal Länder employment of foreigners is still of minor importance. Figures on the number of foreigners employed there are only available from mid-1996. At that

time 41,678 foreign employees there were subject to social security. This corresponds to a proportion of 0.8 per cent of the total population (5,394,933). By mid 1997 the number of foreigners employed rose slightly, to 42,386.

73. Furthermore, the above-average number of foreigners who are found jobs by employment exchanges also speaks for actual equality in foreigners' access to the labour market. Of the 3,302,694 jobs found last year (not including the seasonal work found for Eastern Europeans) 11 per cent were for foreign employees. Their proportion among those found jobs by the employment exchanges is thus clearly higher than their proportion among the working population.

74. With respect to the equal treatment of foreigners in German employment contract law, first of all reference is made to pages 76/77 of the Federal Government's response to the European Commission against Racism and Intolerance questionnaire enclosed as an annex to the last report. This representation is supplemented by the note that collective bargaining agreements in Germany also do not differentiate according to race or nationality. There is therefore also no collective discrimination against foreign employees.

75. Foreign employees who are legally resident in Germany and legally pursue work are not treated differently than are German employees with regard to the granting of benefits under the Social Code Book III. The same applies to job creation schemes and further training schemes. In 1996 40,714 foreigners (6.3 per cent of all entrants) joined measures for further vocational training in Germany; the annual average was 29,034 (5.3 per cent of all participants). The corresponding figures for 1997 were 28,240 (6.7 per cent) and 24,286 (5.7 per cent) respectively.

76. In contrast to the past reporting periods, the figures no longer refer just to the western Federal territory, but to the Federal Republic as a whole. As a result of the relatively small proportion of foreigners in the new Federal Länder the percentage of foreigners with respect to the country as a whole is lower than the proportion in the old Federal Länder.

77. The proportion of foreign employees among employees in job creation schemes is not statistically recorded on a regular basis. According to the results of the annual structural analysis of movements on the labour market, the number of foreigners in job creation schemes in the western Federal territory in the period of the report was between 11 and 13 per cent of the total number of unemployed people in job creation schemes. Because of the much lower numbers of foreigners in the eastern Federal territory there are only a few participants in job creation schemes there.

## E. Re article 6 - Protection against racially discriminatory activities

### 1. Xenophobic crimes

#### (a) Preliminary remarks

78. In its concluding observations the Committee expressed its concern about manifestations of xenophobia and racial discrimination, including anti-Semitic acts and hostility, with regard to certain ethnic groups as well as racial violence, which still occurs to a considerable extent in

Germany. In spite of the Government's efforts to prevent these manifestations and to punish the perpetrators it appears that they reflect deeply rooted prejudices and latent fears among certain sections of the population, especially people with little education and the unemployed. Given this situation, the Federal Government and the Land governments have to make constant efforts to combat the causes of the discrimination and to advance enlightenment and educational programmes (para. 13).

79. The Federal Government continues to see the combating of xenophobia and racism as a major task for society as a whole. As outlined in the last report (para. 99) all the Federal Government's measures and plans against xenophobia, violence and extremism are merged together in an "Offensive against Violence and Xenophobia". In addition to the State measures, in Germany there are now also many round tables against extremism, xenophobia and violence, in which representatives of State authorities and social forces discuss ways of preventing violence. At the same time, many further measures from the Länder, as documented in the publication annexed to the last report, "Measures taken by the Federal Länder against Violence and Xenophobia", have been implemented or introduced.

80. For the information of the Committee, the following development of xenophobic and anti-Semitic crimes for the period of the report (June 1996 to June 1998) are listed below.

(b) General

81. Crimes with a xenophobic motive are subject to a definition that is uniform throughout the country and, since 1991, have been recorded on the basis of a special police recording service. This means that the trends for these crimes can be described on the basis of extensive data.

Total numbers of xenophobic crimes

| | |
|---|---|
| 1991 | 2 426 |
| 1992 | 6 336 |
| 1993 | 6 721 |
| 1994 | 3 491 |
| 1995 | 2 468 |
| 1996 | 2 232 |
| 1997 | 2 953 |
| 1998 | 2 644 |

82. The overview above shows that the total number of xenophobic crimes has clearly fallen since 1993. The negative trend since 1993 was only temporarily interrupted in 1997. The increase by 32.3 per cent in 1997 is largely a result of the increase in "propaganda crimes" (by approximately 30 per cent) as well as the "other crimes" - including incitement (48 per cent). Propaganda crimes account for over 80 per cent of xenophobic crimes within the context of the total number of xenophobic crimes.

83. The development in 1998 shows another fall in the total numbers of around 10 per cent in comparison with the previous year. Here, it is especially important to mention the fall

of 6 per cent in the serious xenophobic acts of violence in the period of comparison. These include: attempted and actual homicide, bodily injuries, arson and explosives offences, breach of the peace. The vast majority of suspects who commit crimes as a result of a xenophobic attitude cannot be assigned to any extreme right-wing group. Only approximately 8.1 per cent of the suspects belonged to extreme right-wing organizations/groups; approximately 18.5 per cent can be termed skinheads. Around 60 per cent of the perpetrators are between 14 and 20 years of age. The violent crimes committed by juveniles are frequently in the crossover area between juvenile delinquency and extremism.

(c) Development of anti-Semitic crimes

84. The total number of "Anti-Semitic Crimes" from the special police registration service established in 1993 show the following picture:

| | |
|---|---|
| 1993 | 656 |
| 1994 | 1 366 |
| 1995 | 1 155 |
| 1996 | 846 |
| 1997 | 976 |
| 1998 | 991 |

85. The 14.6 per cent increase in the total figures over the previous year seen in 1998 is – as with the figures for xenophobic crimes – a result of the increase in anti-Semitic propaganda crimes (8.0 per cent).

2. The causes

86. Annex 3 to the last report was the research study drawn up on behalf the Federal Ministry of the Interior by Willems/Würtz/Eckert, "Analysis of xenophobic criminal offenders". This study provided reliable fundamental data about the socio-demographic structures and group memberships of groups of offenders who are prepared to commit violent, xenophobic acts. This created a key precondition for effective political countermeasures.

87. A new research project links up to the results of this study and intensifies and supplements them. It is broken down into the following sub-projects:

- Analysis of the police files on xenophobic, anti-Semitic and extreme right-wing suspects in 1997. The aim of analysing the police files is to gather information about the structure of xenophobic and anti-Semitic suspects and offenders with regard to the age, the educational level, the employment status and the membership of groups and organizations, but especially with regard to recognizable influencing factors on the crime and motives for the crime.

- Analysis of court decisions on juveniles who were sentenced in 1997 and 1998 because of extreme right-wing, anti-Semitic and xenophobic crimes. The aim of the analysis of the sentences is to gather detailed information about biographical

backgrounds, family contexts, group relationships and the significance of xenophobic and extreme right-wing ideologies as well as other influencing factors on the crime and motives for the crime, to evaluate them based on the typology developed in the 1994 reference study and to present the corresponding changes.

- Carrying out high-quality interviews with around 100 juveniles who had been sentenced because of xenophobic, extreme right-wing and anti-Semitic crimes. The aim of qualitative partial study C is to gather information about the biographical and family connections, environmental influences and group contexts, emotional dispositions, prejudices, attitudes and sensory concepts of xenophobic offenders in discussions with regard to their interactions and their development over time. By analysing the interview, it is hoped to gain knowledge with regard to the outstanding issues of research into violence and extremism; on the other hand, this research approach is an essential supplement and control to the construction of offender types made on the basis of the file evaluation.

88. Furthermore, there is a research project on hooliganism with the aim of analysing the socio-demographic structure of the hooligan milieu(x) as well as the biographical backgrounds, characteristics and motivation of violent hooligans in order to develop approaches for an early and sustainable prevention strategy.

### 3. The opinions of the German populace

89. The surveys conducted by the Mannheim Centre for Surveys, Methods and Analyses since 1980 document over a long period of time the positive changes in attitudes and behaviour towards foreigners in Germany. Personal contacts with foreigners within people's own families, in the neighbourhood, circles of friends and at work have increased several-fold.

90. To analyse current developments, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth in 1998 carried out two studies/representative surveys on the development of right-wing extremism/xenophobia/violence. The study by Kleinert/Krüger/Willems, "Attitudes of Young Germans towards Foreign Fellow Citizens and their Significance with regard to Political Orientations", enclosed at annex 2, contains selected results from a broad-based research project on the long-term observation of living conditions and social and political orientations of young people, which was first surveyed in 1992. Within the context of this study, attitudes and opinions on extremism, xenophobia and violence are also recorded. The research project thus offers the opportunity to consider corresponding opinions and convictions in connection with other social and political attitudes and social conditions of young people in a differentiated way and to present them. This means that development trends in this problem area can be shown better with the objective of drawing up a phenomenology and typology of young people with extreme attitudes and/or violent young people.

91. The study by Falter/Arzheimer, "Right-wing extremism among young people in Germany in 1998 in comparison to 1994", University of Mainz 1998, enclosed at annex 3, provides a comparative study on the extent of extreme right-wing attitudes. The study shows that the vast majority of young people and young adults questioned in Germany continue to decisively reject

xenophobic attitudes and that the incidence of such attitudes has continued to fall in recent years among young people in particular. However, the data gathered in both studies show that xenophobia among young people has to be seen as a problem that society and the political system will have to face up to. Both studies largely confirm the results and values of the wide-ranging projects promoted by the Federal Government in recent years, which were presented in detail in the last report. Offences with an extreme right-wing or racist background largely concentrate on crimes typical for young people, such as bodily injury and damage to property, as well as on the distribution of propaganda and incitement. In interaction with group-dynamic effects, delinquent behaviour and violent attitudes can be constantly regenerated, confirmed and reinforced in these milieux and cliques. Young people and young adults are particularly susceptible to ideological words and radical views.

92. The clearly rising change of social processes as a result of pluralism, individualization and globalization that has been seen since the early 1990s tends to slightly favour anomic conditions that ultimately foster violence. The situation of social change in the east of Germany also plays an important role; for many young people this has led to a fundamental change in their world and has brought about great uncertainty.

93. Because of this, it is one of the major challenges of a democratic State to take social interactions, which contain risk potential such as social conflicts and social rejection, seriously and to counteract them with an active democratic policy, which promotes the development of children and young people in particular.

### 4. Police and criminal law measures

94. Within the context of a special statistical survey, the Land justice administrations continued to gather data on investigation and criminal proceedings for crimes with extreme right-wing or xenophobic backgrounds and informed the Federal Ministry of Justice of the following results for 1997: 16,643 investigation proceedings were started because of offences of this nature; 83 per cent of the cases concerned the distribution of propaganda from anti-constitutional organizations, the use of the symbols of such organizations and incitement (art. 86, 86 a, 130, Penal Code). The number of investigation proceedings increased by around 15 per cent in comparison with 1996; 14,969 proceedings came to an end, around 40 per cent of which came to an end because a suspect could not be found. A total of 1,478 people were sentenced for offences of this kind, of whom 392 people were sentenced to youth detention or prison; 43 people received youth detention or prison sentences of over two years.

95. This demonstrates once again that criminal prosecution does not restrict itself specifically to spectacular violent crimes. The results of the special survey also make it clear that the justice authorities continue to proceed against all offences that are aimed at disseminating extreme right-wing and xenophobic ideology.

96. The sentences for the arson attack in Solingen mentioned in the last report (para. 103) have now become non-appealable.

5. Accusations levelled at German police officers

97. In its concluding observations the Committee expressed its concern about police incidents concerning foreigners, especially Africans and Turks, that had been reported in the press. It went on to suggest better training and more stringent disciplinary measures for the perpetrators (para. 15).

98. The Federal Government took, and continues to take very seriously accusations levelled in some published reports about foreigners as victims of police abuse in the Federal Republic of Germany. It agrees with the Committee that good training and stringent disciplinary measures against the offenders are required.

99. The cases listed are mainly attacks allegedly perpetrated by Federal and Land police officers against foreigners between 1992 and 1995. The investigations against police officers suspected of criminal acts are conducted carefully, just like other investigation proceedings, and without consideration of the identity of the person concerned. Proved transgressions are consistently prosecuted under criminal law and disciplinary proceedings are also taken.

100. As early as October 1994 the Permanent Conference of Land Ministers and Senators of the Interior suggested a research project that was supposed to deal with specific causes and forms of expression of racism and xenophobia within the police. Among other things, the report documents that in recent years a large number of initiatives have been introduced in basic and further training in order to give police officers better preparation for dealing with citizens from a foreign background and for combating xenophobic crimes. In principle, these initiatives reach all German police officers, although there may be variations within the Länder because of the Federal system.

101. The training and study plans of all ranks contain a broad curriculum in which the employees receive theoretical and practical training for commitment to the free democratic basic order, respecting and preserving human rights and dealing tolerantly with citizens of German and foreign origin. These training courses are supplemented by special communications and behaviour training. Furthermore, the subject of "Police and Foreigners" is a main theme in training. In their training German police officers also undergo intensive teaching about the principles of the legality of the administration and protection of basic rights. In this context, the use of direct force in a State governed by the rule of law is also a central issue.

102. For several years there has been a greater emphasis in further training on the problems of ethnic minorities and the need to combat racism and xenophobia. This also includes tolerant dealings with citizens of foreign origin taking account of legal, social-policy and psychological aspects. With the support of the psychological services, behaviour-oriented training programmes to increase social skills (dealing with citizens) in the field of communications as well as overcoming stress and conflicts are being carried out to a greater extent for all ranks. Above and beyond this, for example, special series of seminars are being conducted on the subject of "The Police and Foreigners", in which above all understanding for value systems and the behaviour of other cultures is passed on.

103. In addition, the understanding of German police officers for other - especially non-European - cultures is assisted by the hiring of foreigners in the German police service.

104. Within the context of police cooperation in the EU, Germany is also actively involved in measures to combat racism and xenophobia.

105. However, none of these measures can prevent human failings in individual cases. It can never – especially not among police officers – be excused and all the means available to a State based on the rule of law are used to counteract such phenomena. In this process, the principle of division of powers – especially the independence of the judiciary – guarantees an objective and independent assessment of the processes.

## 6. Legislative measures

106. Following on from the criminal laws outlined in the last report (para. 142) reference must be made to the Sixth Act on the Reform of Penal Law that entered into force on 1 April 1998.

107. As a result of the Sixth Penal Law Reform Act, inter alia, the system of the range of punishments in the Special Part of the Penal Code has been reorganized. In particular, strictly personal objects of legal protection, such as life and physical integrity, were given greater importance than material objects of legal protection. With respect to extreme right-wing rioting, this means primarily that the changes with regard to bodily harm offences should be pointed out. Although these measures are not yet directly connected to riots with a right-wing extremist motivation, they illustrate the importance that the Federal Government attaches to the legal protection of physical integrity. As far as bodily harm offences are concerned, attempted bodily harm is now generally liable to prosecution. Dangerous bodily harm (art. 224, Penal Code) will now be punished with much higher sentences (prison sentences of 6 months to 10 years compared to 3 months to 5 years). If the offender deliberately or knowingly causes certain consequences of a bodily injury, e.g. loss of sight, the punishment range is now 3 to 15 years in prison (previously 2 to 10 years in prison).

108. Furthermore, reference should also be made to the amendments made to article 127 of the Penal Code (formation of armed groups) and article 168 (disturbing the peace of the dead).

109. The provision of article 127 of the Penal Code was reworded and extended to groups that use dangerous implements other than weapons. This extension of the elements of the offence may gain significance with regard to extreme right-wing groups armed with baseball bats, for example.

110. The area of application of article 168 of the Penal Code was extended to cover biers and public memorials to the dead that are not places of burial. Prior to this amendment, article 168 contained a criminal liability gap if the memorials to the victims of National Socialism – especially former concentration camps – were desecrated by provocative gestures without the use of physical violence. This gap has been closed. Now it is ensured that – in addition to damage and destruction – other grossly improper behaviour at memorials to the victims of National Socialism can be punished under article 168 with a prison sentence of up to three years or with a fine.

7. Redress for racially discriminatory incidents

111. In its concluding observations the Committee noted with concern with respect to article 6 of the Convention that certain groups of foreigners – including people without legal status or with temporary residence – do not have the right to call for redress for racially discriminating incidents (para. 18).

112. In this connection the Federal Government points out that the interests of the injured parties are largely covered by the Act on the Victims of Acts of Violence (Victims Compensation Act - OEG). The Victims Compensation Act pursues the objective of compensating people who are the victims of an act of violence in the sovereign territory of the Federal Republic of Germany for the physical or mental damage they suffer as a result. It governs an independent State compensation system above and beyond the general social security systems and social security benefits for those whom the German State could not protect against a deliberate act of violence. Benefits under the Victims Compensation Act are paid upon application; there is no application deadline.

113. The aim of the OEG is to compensate for the health and economic consequences of acts of violence. People who have suffered damage to their health as a result of a deliberate, illegal act (injured party) or are the dependants of people who have died as a result of the damage to their health are entitled to compensation.

114. Originally only German nationals were entitled to compensation under the Victims Compensation Act. As a result of the Second Act to Amend the Victims Compensation Act of 21 July 1993, retroactive to 1 July 1990, all foreigners who are legally resident in Germany and have become the victims of a deliberate act of violence are entitled to compensation under the Victims Compensation Act or can at least receive benefits within the context of hardship compensation in the case of a short stay. The amount of benefits is based in principle on the extent of their integration. The term "legal" does not necessarily mean that the foreigner has to have a valid residence permit.

115. The reason for extending the group of people entitled to compensation by the Second Act to Amend the Victims Compensation Act was the increase in the number of violent attacks on foreigners in Germany. These attacks were aimed both at foreigners who had lived here for a long time and at foreign refugees and asylum-seekers; some of the perpetrators cited a racist attitude or xenophobic attitude as a motive. The declared objective of the Second Act to Amend the Victims Compensation Act was to give all of these victims support by creating an entitlement to compensation under the Victims Compensation Act.

116. On the whole, the situation of foreign victims of acts of violence is as follows:

(a) Complete equality with Germans with regard to the preconditions and extent of the benefits is granted to nationals from EU member States, from States whose EU legal provisions mean that they have to be treated equally to Germans (currently this applies to Norway, Iceland and Liechtenstein), and from States where reciprocity is guaranteed (this is investigated in each individual case; so far there has been a guarantee of reciprocity with respect to some States in the United States and some provinces in Canada);

(b) Other foreigners receive benefits to the same extent as Germans if they have been legally resident in Germany for at least three years;

(c) Foreigners who have been legally resident in the Federal Republic for longer than six months but not yet three years receive benefits to the same extent as Germans with the exception of income-dependent benefits such as compensation paid to a severely injured person for loss of his/her vocation, the compensation pension to safeguard livelihoods, bonus for spouses and the supplementary benefits from welfare for the victims of war;

(d) The same benefits as received by the foreigners named under (c) are paid to foreigners who are legally temporarily resident in the Federal Republic for a period of six months at the most and are either married to a German or a foreigner to whom the conditions under (a), (b) or (c) apply or are related to them in direct line or if they are a national of a State party to the Council of Europe European Convention on Compensation for Victims of Acts of Violence - ratified by Germany in 1997 - (currently this applies only to Swiss citizens).

117. Foreigners who are not entitled on the basis of the criteria under (b), (c) and (d) - especially if their stay in Germany is not intended for longer than six months (visitors, tourists) - may be granted compensation for hardship with the agreement of the supreme authorities in the Land in question in agreement with the Federal Ministry of Labour and Social Affairs if the application of these criteria would lead to hardship in individual cases.

### 8. Further State measures, in particular to provide information, clarification and education

118. The main means of the philosophical-political argument remains comprehensive public relations work on the part of the Federal Government, the form and contents of which are aimed at certain target groups. Various measures effective among the public that have already proved themselves in the past are being continued. For example, the "FAIRSTÄNDNIS - Menschenwürde achten - Gegen Fremdenhass"* campaign, the organization of seminars for social multipliers on the subject of extremism and violence, the publication every year of four to six brochures within the series "Texts of Internal Security" and the annual publication of the report Protection of the Constitution, which is a basis for information, in order to assess the risks to the democratic constitutional State posed by racism and xenophobia.

119. Demand for the young persons' magazines Enough - No to Violence and Democracy Live continues to be high among schools in the new Länder in particular. The Federal Ministry of the Interior decided to issue new issues of both magazines in 1999.

120. The contribution of the Federal Government's Commissioner for Foreigners' Affairs must also be emphasized. Together with the Freudenberg Foundation and the ARD television company, represented by Westdeutscher Rundfunk, she has awarded the annual CIVIS radio and television prize "Living in Cultural Diversity - Respecting Others" since 1998. The work

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* Fairständnis is a play on the German word Verständnis, meaning "understanding". The slogan therefore means "Understanding - respect human dignity - against xenophobia".

associated with the CIVIS prize, including its own youth jury, which awards prizes to contributions produced by young people, and the award ceremony involves many hundreds of people every year who themselves are media producers or consumers. The CIVIS prize fulfils an important function in the sensitization of the media for appropriate ways of dealing with subjects such as integration or foreignness in the media.

121. However, long-term success in combating extremism, xenophobia and violence requires much greater networking and integration of the relevant social forces (families, schools, churches, sports clubs, trade unions, employers, etc.) in this area. This is the aim of the "Alliance for Democracy and Tolerance - Against Extremism and Violence" announced by the Federal Government. The public should receive as much information as possible about these issues and be mobilized and sensitized. At the same time, this is a realization of the Federal Government's guiding principle of an activating State that makes suggestions and sets framework conditions but does not do everything itself. This means that the desired Alliance for Democracy and Tolerance also has a value-forming dimension and represents a further step towards a civil society.

122. The precondition for the success of this Alliance is to efficiently coordinate and package the multi-faceted measures, projects and concepts for action against racism and xenophobia that approach several levels at once. Constructive participation by the media is desired.

123. The Federal Government and the Länder, which are primarily responsible for schools, education and culture in Germany, see combating xenophobia and every form of racial discrimination as a very important task and have dedicated themselves to this in the period covered by the report. Mutual understanding between people of different ethnic groups, tolerance and openness to other people are central educational objectives in the education system. The Länder have considerably further expanded the places for foreign children in kindergarten, in pre-school education and school education. Many concrete programmes to promote language and to open up education culturally have been developed.

124. In 1996, the Permanent Conference of Education Ministers adopted the recommendation "Intercultural Education and Teaching in School", which was implemented in practice in the schools in the Länder. A copy of the recommendation is enclosed at annex 4.

125. Both before and after the European Year Against Racism (1997), the Federal Government and Länder carried out a number of initiatives and further training projects to combat xenophobia and racism and promoted the implementation of concepts to prevent violence. The Federal Ministry of Education and Research has furthered the following projects, inter alia:

- Development of a practice-based "Further training curriculum for teachers, social workers and Youth Welfare Office employees to develop strategies for action to combat xenophobia and to prevent violence";

- Further training course for multipliers to prepare, implement and evaluate intercultural violence-prevention and cross-border projects by and with young people;

- Adult education with ethnic minorities and immigrants in the European network "Learning to live in a multicultural society";

- Museum exhibition project "Foreigners in Germany - Germans alienated" (Cloppenburg museum village and other museums);

- "Intercultural Youth Centre" to promote Turkish children and young people by means of educational and cultural encounters with German young people.

126. The results of these model projects are a key basis for further projects that contribute to breaking down xenophobia and promoting human and cultural openness, tolerance and civil responsibility.

127. Within the context of its efforts to prevent violence, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth supports a large number of measures in order to counter violence, xenophobia and right-wing extremism. In its response to the major interpellation "Juvenile Criminal Law and Preventive Strategies" (Bundestag Printed Material 13/8284 of 23 July 1997, annex 5) the Federal Government presented its current findings and its assessment on the scope for action and the need for action.

128. The "Campaign against Aggression and Violence" implemented in around 130 individual projects in 30 locations has proved to be particularly effective at a regional level, as has the model programme on "Combating Violence and Preventing Violence in the Locality". The comprehensive material, findings, experience and recommendations of these model programmes, carried out from 1992 to 1996, have been published in a five-volume series of books and are thus available to interested parties, responsible parties and experts. Several Federal Länder have taken initiatives and ideas from this programme and implemented them in their own Land's measures against xenophobia and racism. In these projects, street social work/mobile youth welfare work has become an approach to action in dealing with violence-oriented young people and those at risk of becoming extremist. Added to this are projects and leisure activities in youth work aimed at reducing and preventing violence and with a cultural, educational policy or learning-by-doing content, community work projects, supervised living, and workshop and work projects. Where violence-oriented young people are successfully incorporated into suitable projects, riots can be prevented, readiness to use violence can be reduced and, in the longer term, enmities, hatred and prejudices can be reduced or corrected.

129. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth funds targeted measures to combat discrimination against ethnic minorities and xenophobia with the Information, Documentation and Campaign Centre against Xenophobia of youth associations and youth initiatives in Germany and with a campaign programme on the integration of young foreigners. Since 1995 this integration programme has funded projects in which young foreigners are supported when looking for jobs and vocational training and in which general integration assistance is tried out. In this context, offers are provided that supplement and strengthen the previous counselling by the labour administration and support provided by youth social work by means of new approaches and initiatives.

130. In the field of political education, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth supports the Association of Initiative Groups in Work with Foreigners dedicated to the integration of foreigners. Their seminars and conferences are primarily aimed at multipliers in work with foreign young people. The situation of foreigners and immigrants on the labour market and measures against racism and discrimination are some of the main themes.

131. The Federal Republic of Germany has participated in public relations campaigns together with the trade unions and employers such as an information programme for young apprentices "Living with Foreigners - It's Better Together", and has participated in the European Youth Campaign against Racism, Xenophobia, Anti-Semitism and Intolerance, "All different, all the same". The object of these campaigns was to support education work in increasing tolerance of people of foreign origin and to advocate more understanding.

132. Media educational campaigns should ensure confident dealings with xenophobic and extremist actions. For example, a brochure, "Rock from the Right", which provides information about right-wing rock and the origins, developments and trends in this music sector, is regularly updated and reprinted.

133. In recent years, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth has also been involved in promoting the integration and participation of older foreigners who live in Germany. Limited contacts between older labour migrants and the German populace are of special importance here. By means of the scientific support for the model projects, "Germans and Foreigner Together: Active in Old Age" and "Adentro! Spanish-Speaking Senior Citizens Get Involved" and a specialist conference, "Foreign and German Senior Citizens Together: Models and Perspectives of Social Participation and Integration", as well as the collection of a "Database on Migration: Projects and Contact Addresses" and its publication in the series of Federal Ministry for Family Affairs, Senior Citizens, Women and Youth documents as a compound project with the title, "Older Foreigners in Germany", the Ministry has:

- Prompted intercultural dialogue;
- Further developed exiting contacts between older migrants and locals;
- Brought the specific living conditions and experience of migrants to public attention by addressing certain issues;
- Every year trained people to be multipliers in their own ethnic group;
- Gained an overview of the existing shortcomings in the old people's welfare structures.

134. With the Migration database, which compiles exemplary projects of old people's welfare for foreign senior citizens, the efforts in work with foreigners are made more effective by means of synergies and examples are given to people new to the field of migration work, as well as

means of meeting contacts. As a result of the above-mentioned scientific findings, fundamental data on policy-shaping and examples of further approaches in old people's welfare work for labour migrants have been gained in order to further their integration.

135. As mentioned above with regard to article 5 (integration policy), the Federal Ministry of Labour and Social Affairs continues to draw up measures to promote the linguistic, professional and social integration of foreign employees and their families. With respect to the concern expressed by the Committee in paragraph 13 of its concluding observations, exemplary projects are listed below that are to improve the way in which foreigners and Germans live together.

136. The project "Pro domo - Meeting centre for foreign and German Berliners" in Berlin-Pankow set up with funding from the Federal Ministry of Labour and Social Affairs supports the process of increasing migration of foreigners into the eastern part of the German capital. The foreigners are supported in their integration and those Germans who have little experience of living alongside foreigners are prepared for their new neighbours. By working together and with contact in leisure time an attempt is being made to develop a willingness for a dialogue and acceptance, especially among xenophobic young people and those who are prepared to use violence.

137. The "Awareness Project against Xenophobia" in Essen and Duisburg that ended in 1998 has made local authorities and German and foreigners' associations and organizations aware of the problems of the integration of foreigners and of Germans and foreigners living alongside each other. In the long term, there will be a regional cooperation network set up by the project.

138. In early 1998 the project "Intercultural Conflict Management - Development of Strategies for Dealing with Xenophobic Structures among Germans and non-Germans" started in the Ruhr region. Its tasks are solving intercultural conflicts at work, where Christians and Muslims live alongside each other, and in the fields of health and sport as well as drawing up strategies against the isolation of immigrants vis-à-vis the majority of society.

139. Important contributions to improving the way Germans and foreigners live together are also made by the many information campaigns and multiplier training courses funded by the Federal Ministry of Labour and Social Affairs, which were reported in detail in paragraph 160 of the last report.

### 9. Setting up a national centre with the task of implementing the Convention

140. In its concluding observations the Committee recommended that the establishment of a national centre with the task of implementing the Convention should be considered (para. 20). In this context, the Federal Government points out that the government authorities at Federal and Land level that are entrusted with tasks that affect the Convention already monitor the implementation of this Convention.

141. At national level the Federal Government Commissioner for Foreigners' Affairs has special tasks with regard to the integration and observing the rights of immigrants in Germany.

142. Since 1991 the position, tasks and powers of the Federal Government Commissioner for the Concerns of Foreigners have been governed by a Federal Government decision. Within the context of the new version of the Aliens Act, which came into force at the end of 1997, the office of the Commissioner was placed on a legal footing under the - also new - name "Federal Government Commissioner for Foreigners Affairs" (Aliens Act - articles 91 a-91 c). This fulfilled the objective of strengthening the role of the Commissioner and to anchor it more firmly in the public awareness. The main tasks of the Commissioner are:

- To promote the integration of the foreign population permanently resident in the Federal Republic and to support the Federal Government in the further development of its integration policy, also with respect to labour market and social policy aspects and to make suggestions for the further development of integration policy, also at a European level;

- To further develop the environment for foreigners and Germans, and different groups of foreigners, to live together as peacefully as possible, to promote understanding for each other and to counteract xenophobia;

- To counteract unjustified inequalities;

- To ensure that sufficient account is taken of the concerns of foreigners resident in the Federal Republic;

- To provide information on the legal scope of naturalization;

- To ensure that the freedom of movement rights of Union citizens resident in the Federal Republic are respected and to make proposals about how this can be further developed;

- To observe immigration to the Federal Republic and the European Union as well as immigration trends to other countries.

143. The rights of the Commissioner vis-à-vis the ministries concerned were strengthened as a result of the express legal regulation. The Commissioner can now request statements from public Federal authorities if she has sufficient indications that public Federal authorities are committing violations within the meaning of article 91 b, paragraph 1 (3) of the Aliens Act (unjustified unequal treatment) or are not observing the rights of foreigners in any other way. The Commissioner reports to the German Bundestag at least every two years on the situation of foreigners in Germany. She is involved in legislation projects or any other matters that affect her area of responsibility as soon as possible.

144. It has already been stated above re article 4 that the European Office on Monitoring Racism and Xenophobia has started its work and that the European Commission against Racism and Intolerance (ECRI) inspects the actual and legal conditions in the individual member States of the Council of Europe, i.e. also in Germany.

145. In view of the authorities that already exist, it does not appear to be absolutely essential to establish another national office with the task of implementing the Convention.

F. Re article 7 - combating racial prejudice at school

146. Above and beyond the contributions regarding the considerations in article 6 (see paras. 118-138), combating xenophobia in the educational system was a special focus of the public discussion. Many citizens, citizens' initiatives, associations and institutions, as well as the Federal Government, Länder and local authorities, have committed themselves to humanity, openness and tolerance, especially in the educational system of the Federal Republic of Germany. There is broad consensus in society that respecting human dignity as well as openness, tolerance, liberality and solidarity towards other people are among the most important objectives of education. As a result of education for tolerance and responsibility, the ban on deliberately harming other people is given social validity. This is a central part of lessons in Germany, especially, whose history includes unimaginable xenophobic and anti-Semitic crimes, and it must not be scrapped. But lessons also include express instruction of the historical knowledge about the dangers posed by extreme right-wing parties. This also means dealing with German and European history, the earlier migration patterns of various groups of the populace and passing on openness and tolerance vis-à-vis people from other parts of the world. In the process, it must also be made clear that it is perfectly possible to combine one's own national awareness with "intercultural opening-up" of school and society. At the same time it must be pointed out that schools alone would be overburdened with the task of breaking down xenophobia, anti-Semitism and violence. The ethnic principles of the democratic State also have to be experienced in the parental home and they have to be the yardstick of political action. Even the media are given special responsibility in breaking down xenophobic tendencies.

147. In addition to the initiatives and model projects that have already been outlined with respect to article 6 and which, above all, are supposed to promote openness, tolerance and humanity, there are more projects that are relevant in this context.

148. In the Federal Government-Länder-Commission for Educational Planning and Research Promotion (BLK) concrete programmes to improve the training scope of disadvantaged and disabled young people - especially also for foreign young people - are adopted. One example for this is the recommendation, "Innovative Measures to Improve the Situation of Young People with Learning and Performance Disabilities in Vocational Training" (BLK, volume 52 of 7 October 1998).

149. The "Programme for the Disadvantaged" developed earlier has been expanded and further developed by the Federal Ministry of Labour and Social Affairs and the Federal Institute for Labour into a comprehensive programme for disadvantaged young people. This programme is still important for many foreign young people.

150. In the model project of the Federal Ministry of Education, Science, Research and Technology the "Advice Centre for the Qualification of Young Foreigners" in Cologne received funding, which has considerably improved the willingness of companies and young foreigners to enter into apprenticeships. This experience must now be implemented in other towns.

151. In 1998 the Federal Ministry of Education, Science, Research and Technology initiated the campaign, "Mobilizing Apprenticeships in Foreign Companies", which is implemented together with the Federal Institute for Labour and many economic associations. The objective is to win over more foreign entrepreneurs to provide training places.

152. As far as universities are concerned, the Federal Ministry of Education, Science, Research and Technology continues to fund a large number of events and publications that deal with racism and xenophobia at universities. With regular meetings, the working group "Against Racism and Xenophobia", involving 30 national student associations and other organizations, has continued its activity. The working group has carried out a number of seminars and conferences on the subject of "Minorities in Germany", racism and youth culture, racism and elites and "Internationalization instead of Shutting Out".

153. With all of the measures and initiatives the main concern was and is to reinforce openness, tolerance and liberality in society and to prevent open or covert discrimination. Many initiatives from committed citizens and associations also contributed to this in the European Year against Racism.

154. The Federal Government intends, in line with the Committee's request in its concluding observations (para. 24) to publicize its report and the concluding observations of the Committee on a wide basis in Germany to encourage a discussion about the outstanding problems. The last report has in the meantime been posted on the Internet (http://www.bmj.bund.de).

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